

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

JEAN T. THOMAS, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Civil No. 3:12CV450 (JRS)
	:	
WITTSTADT TITLE & ESCROW	:	
COMPANY, LLC,	:	
	:	
Defendant.	:	

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
CONSENT MOTION TO STAY DISCOVERY PENDING MEDIATION**

COME NOW, the Plaintiffs, in support of the Parties' joint motion to stay discovery pending mediation respectfully supplies the following memorandum of law.

**Background**

On June 20, 2012, the Plaintiffs filed a class action complaint against Wittstadt, alleging certain violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* ("FDCPA"). The Plaintiffs amended their complaint on September 4, 2012. The parties initially scheduled a settlement conference for January 22, 2013, before Hon. David J. Novak. Meanwhile, the Plaintiffs served Wittstadt with written discovery (document requests, interrogatories, and requests for admission) on December 18, 2013. The Plaintiffs agreed to stay discovery, including the document requests, interrogatories, and requests for admission, until after the settlement conference.

The Parties then engaged in preliminary settlement discussions and jointly decided to enter into private mediation. While the parties sought the availability of mutually agreeable mediator in February, they were able to reset the settlement conference with Judge Novak until March 12, 2013, in order for the parties to enter into

private mediation. The parties agreed to mediate the case privately with Hon. Barry Poretz, who was available on February 26, 2013. An unforeseen scheduling conflict necessitated seeking a new mediation date according to Judge Poretz's next availability, which wasn't until April 9, 2013. Consistent with their prior agreement, the Plaintiffs agreed to stay discovery, including the document requests, interrogatories, and requests for admission, until after the mediation with Judge Poretz.

The Court has not yet issued a Scheduling Order or held a Rule 16(b) pretrial conference in this matter.

### **Argument**

The Parties and the Court will benefit from the entry of a stay pending private mediation with Judge Poretz in this case. Not only do the Parties believe that there is a strong possibility they will be able to achieve a compromise in this matter, they believe that the benefit to avoiding the cost and consumption of resources in litigating the matter at this early stage is outweighed by the parties' desire and plan to mediate in good faith. The Plaintiff initially filed this case as an FDCPA class action against Wittstadt Title & Escrow Company for violations associated with its non-judicial foreclosures and debt collection activity in Virginia. The claims against Wittstadt are substantial and affect a large number of consumers who have been subjected to foreclosures and debt collection by Wittstadt. The named Plaintiff are but two of several individuals represented by Plaintiff's counsel.

Consumers have brought similar actions against other foreclosure trustees for similar violations, of which a group of consolidated cases against one of Virginia's largest foreclosure firms have been successfully mediated with the facilitation of a private mediator, Hon. Dennis W. Dohnal, in the Eastern District of Virginia. *See Naim v. Samuel I. White, P.C.*, 3:11CV168. It has been with the involvement of the private mediator that the parties were able to reach such a compromise, and together with other similar cases, the Plaintiff believes that there is a template for mediation and ultimate settlement of the issues presented in this case.

If the case is not settled, the parties will submit a joint status report. If the parties are unsuccessful at

mediation, the Plaintiff foresees moving for leave to file a Second Amended Complaint and recommence litigation with zeal. This case is in the very early stages of litigation, no Rule 16(b) conference has been held nor has a scheduling order been entered. The Plaintiff served discovery, but is willing to stay discovery and this matter generally in order to devote the attention needed to resolving the complex issues raised in this case. The parties have set the matter for private mediation with Judge Poretz for a date certain and have a plan to proceed with litigation immediately should the case not be settled. This request is made in good faith, is not sought for a dilatory purpose and would serve the ends of justice by conserving resources of the court and the parties while mediation is conducted.

The Plaintiffs respectfully request that the Court enter an order staying this matter and discovery (including the document requests, interrogatories, and requests for admission) until ten days after the April 9, 2013, mediation, at which time the parties will submit a joint status report to the court.

Respectfully submitted,

JEAN T. THOMAS and  
HEATH B. THOMAS,  
*on behalf of themselves and  
all others similarly situated,*

\_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was electronically served, this 5<sup>th</sup> day of March, 2013, to:

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